Carrington, David

From: David Carrington <dcarrington@racingusa.com>
Sent: Friday, July 29, 2011 6:03 AM
To: Carrington, David
Subject: FW: Jeffco
Attachments: spacer.gif; sig-logo.gif; BIRMDOCS-#983114-v8-Draft_Sewer_Term_Sheet_v_2.pdf; BIRMDOCS-#984149-v1-Concession_rate_fragment.pdf; 7.27.2011 Jeff Co Sewer Rev Sc 27.pdf; 7.27.2011 Jeff Co Sewer Rev Sc 27T.pdf; 7.27.2011 Jeff Co Sewer Rev Sc 28.pdf; 7.27.2011 Jeff Co Sewer Rev Sc 28T.pdf

-----Original Message-----
From: Perry, David [mailto:David.Perry@finance.alabama.gov]
Sent: Wednesday, July 27, 2011 10:39 PM
To: David Carrington (dcarrington@racingusa.com)
Cc: Foster Clark; Hobson Presley (hpresley@presleyburton.com); pdarby@babc.com; 'Sewell, Jeff'
Subject: FW: Jeffco

FYI,

As I mentioned via text a few minutes ago, the creditors are at 2.14B.
Assured is offering exactly what they offered in 2008 ($17.5M), but we're losing about $100M each from FGIC and Syncora compared to their 2008 offers because of their changed financial condition and the NY Insurance Commissioner's inability to support anything more b/c of their condition. JP is at 738 currently (exactly 40 c/d according to them). They told John they're not willing to do more until the IRS audit issue gets cleared.
Liquidity banks, hedge funds and auction rate holders are all at 85 cents on the dollar.

Attached is the confidential settlement memo itself. Some financial models are attached, but you can disregard those for the time being. We'll get more accurate and more specific ones in the morning. John Young is available to answer any questions we have about the terms at 7:30 tomorrow morning and to give us a little more insight into the dynamics among the creditors at this point, then we can discuss amongst ourselves. Talk to you in the morning.

David

From: Hahn, W.Patton [phahn@bakerdonelson.com]
Sent: Wednesday, July 27, 2011 9:44 PM
To: Perry, David
Cc: youngj@jccal.org; Conner, Joe
Subject: Jeffco

David:

Pursuant to our discussions, attached please find (1) a memorandum containing the terms and conditions of the offer we have obtained from the creditors, (2) a short explanation of the likely rate increases associated with this offer; (3) four financial models prepared by David Brownstein. As John indicated, due to the late hour, these models do not reflect the offer contained in the attached memorandum; we will try to provide that model as soon as possible in the morning.

As we indicated, the monoline insurers' concession level has been dictated almost entirely by their financial condition and their regulators (i.e. the New York Department of Insurance). While this is not (except for insurer) at the same concession level these parties offered in 2008, it certainly appears that they have offered the maximum amount possible under the circumstances - a fact confirmed by the New York Department of Insurance.

The Receiver also believes that another seven day extension of the current standstill agreement would be appropriate under the circumstances. This would allow the Receiver and other interested parties to better refine the general terms and conditions of a possible deal, and engage and work with the County on the formulation of the low-income and the possible sources of funding for the program.

As always, John and I are available to answer any questions or provide any information you, the Governor's office, or the County might need.

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Memorandum

To: David Perry

From: Patton Hahn, Joe Conner and John Young

Date: July 27, 2011

As you know, following our meeting on July 19, we have engaged in intensive efforts with as many creditors as possible in an attempt to obtain a final set of settlement terms. Set forth below are the material terms that we believe the creditors will require, and the concessions that the creditors collectively are willing to make.

All of the creditors we spoke with contemplate and understand that a settlement between the County and the holders of the sewer warrants will require numerous documents and legislation that will take additional weeks and months to negotiate and implement, and which may contain additional terms not contemplated herein. The following terms are the necessary components of any ultimate framework for settlement.

1. Refinancing. A refinancing transaction (the "Refinancing") that results in net proceeds of $2.142 billion used to retire existing debt, representing aggregate creditor concessions of approximately $970.6 million (exclusive of $58 million in contractually-owed default interest that the creditors are foregoing) (the "Concessions"). It is contemplated that the Refinancing shall close no later than July 1, 2012 (the "Closing Date"). The period between the date the parties enter into a settlement agreement and the Closing Date shall be referred to as the "Standstill Period." Specific milestones will need to be met on a timely basis according to a calendar incorporated into a settlement agreement. The Creditors' willingness to pursue closing of the Refinancing is subject to the following conditions:

    a. Any settlement agreement and new debt instruments issued as part of the Refinancing will require increases in sewer revenues, rates, or other revenue sources sufficient to adequately service the new debt;

    b. 2008-2010 County audited financial statements to be completed and delivered to the Receiver by September 30, 2011.

    c. 2011 County audited financial statement completed and delivered to the Receiver by December 31, 2011.

    d. Formation of independent public corporation ("IPC") to own and control the System after the Refinancing with an independent board that is not subject to political influence. At a minimum, the IPC would not be authorized to file bankruptcy without the consent of the Governor, would be subject to a formula for automatic rate increases to service the new debt, and would be governed by documents to ensure efficient and effective operation of the System. County to authorize counsel to *immediately* send the Receiver a copy of current drafts of governance documents and legislation for formation of an IPC and to authorize County counsel to work with Receiver's and Creditors' counsel on such documents and legislation.

e. All parties equally share market risk, or to a mutually-agreeable hedge, until closing of the Refinancing.

f. Refinancing contingent upon negotiation of Closing Agreement with IRS covering ongoing IRS audit of existing debt with no liability to any current warrantholders.

g. Refinancing contingent upon dismissal of the Wilson litigation and judicial confirmation of financing structure (including that State's moral obligation pledge), proposed sewer rates, and all other aspects of Refinancing transaction (including but not limited to the validity and structure of IPC).

h. Refinancing contingent upon consent of the New York Department of Insurance and any other regulatory agencies from which approval is necessary.

i. Assumptions for refinancing:

- Total redemption cost: approximately $2.5 billion
- DSRF: approximately $250 million
- 1.25x coverage
- 40-year final maturity
- Operating expenses covered by cash flow and capital needs covered by current warrant reserves (at both Regions and BNY) and cash flow
- State credit support for refinancing debt in the form of "moral obligation" agreement to seek legislative appropriations to replenish DSRF if drawn upon. County to reimburse State appropriations, if any
- DSRF and issuance costs funded with bond proceeds
- County to create reimbursement reserve fund for benefit of the State; initially funded with $50 million from bond proceeds.

2. Any and all remaining swap agreements related to current warrants terminated with no resulting liability.

3. County not to file Chapter 9 bankruptcy during the Standstill Period.

4. Based upon above-referenced aggregate creditor concessions, dismissal of all litigation and release of all claims involving and among the County and Creditors related to the System, including but not limited to any litigation involving the County, the Monoline Insurers, and J.P. Morgan (collectively, the "Litigation"), and a stay of

the Litigation (other than the Receiver action), including discovery, during the Standstill Period.

5. County to retain SEC settlement funds for General Fund purposes if County funds up to $25 million for the low-income assistance program as proposed by the Receiver in the Interim Report and to work with the Receiver to secure funding from an independent source.

6. Receiver to stay in control of System until the closing of the Refinancing and the IPC takes over the System and Receiver to provide transitional oversight for a duration to be determined after the IPC takes over the System. The County shall cooperate in all respects in the transition of the System to the IPC.

7. County to release ESD from, and not charge ESD for, any support services until close of Refinancing and transfer of sewer system to IPC.

8. County, Governor, and Attorney General support Receiver in any actions filed by third parties to contest the Receiver's authority and/or the reasonableness of existing and/or future rates consistent with rates as proposed in the Refinancing and other settlement documents.

9. Governor to call a special legislative session to begin no later than November 1, 2011 to pass legislation to effect the Refinancing, including but not limited to:

   a. Form the IPC;

   b. Provide the moral obligation for the Refinancing;

   c. Implement a mandatory hookup policy as soon as practicable, and not later than the Closing Date; and/or

   d. Provide a conditional and/or contingent revenue source to backup the revenue requirements of new bonds to be issued in the Refinancing.